

STEPHANIE S. CHRISTENSEN
Acting United States Attorney
SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division
SHAWN J. NELSON (Cal. Bar No. 185149)
GREGORY BERNSTEIN (Cal. Bar No. 299204)
KEITH D. ELLISON (Cal. Bar No. 307070)
GREGG E. MARMARO (Cal. Bar No. 338627)
Assistant United States Attorneys
1100/1400 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: 213-894-5339/3183/6920/8500
Facsimile: 213-894-0142
E-mail: shawn.nelson@usdoj.gov
gregory.bernstein@usdoj.gov
keith.ellison2@usdoj.gov
gregg.marmaro@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE LANDA-RODRIGUEZ, et al.,
[#2-GABRIEL ZENDEJAS-CHAVEZ]

Defendants.

No. 2:18-CR-00173(A)-GW-2

GOVERNMENT'S MOTION IN LIMINE NO. 1 REGARDING IMPEACHMENT AND CROSS-EXAMINATION OF THE GOVERNMENT'S COOPERATING WITNESSES

Trial Date: August 2, 2022
Trial Time: 8:30 a.m.
Location: Courtroom of the Honorable George H. Wu

Plaintiff United States of America, by and through its counsel of record, the Acting United States Attorney for the Central District of California and Assistant United States Attorneys Shawn J. Nelson, Gregory Bernstein, Keith D. Ellison, and Gregg E. Marmaro, hereby files its Motion in Limine No. 1, regarding impeachment and cross-examination of the government's cooperating witnesses, specifically to exclude evidence regarding the witnesses' prior convictions, other

1 than as allowed by the Federal Rules of Evidence, and to require
2 prior approval before cross-examining the witnesses regarding
3 misconduct that did not result in a conviction.

4 This Motion is based upon the attached memorandum of points and
5 authorities, the files and records in this case, and such further
6 evidence and argument as the Court may permit.

7 Dated: July 24, 2022

Respectfully submitted,

8 STEPHANIE S. CHRISTENSEN
Acting United States Attorney

9 SCOTT M. GARRINGER
10 Assistant United States Attorney
11 Chief, Criminal Division

12 /s/

13 SHAWN J. NELSON
GREGORY BERNSTEIN
14 KEITH D. ELLISON
GREGG E. MARMARO
Assistant United States Attorneys

15 Attorneys for Plaintiff
16 UNITED STATES OF AMERICA
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF AUTHORITIES.....	i
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. REQUESTS TO LIMIT IMPEACHMENT BY PRIOR CONVICTIONS.....	2
1. Cooperating Witness-1.....	4
2. Cooperating Witness-2.....	5
3. Cooperating Witness-4.....	8
4. Cooperating Witness-5.....	9
5. Cooperating Witness-6.....	10
III. REQUEST FOR PRIOR APPROVAL FOR CROSS-EXAMINATION WITH PRIOR ACTS NOT RESULTING IN CONVICTION.....	11
IV. CONCLUSION.....	14

TABLE OF AUTHORITIES

<u>DESCRIPTION</u>	<u>PAGE</u>
Cases	
<u>Delaware v. Van Arsdall,</u> 475 U.S. 673 (1986)	2
<u>United States v. Abair,</u> 746 F.3d 260 (7th Cir. 2014)	11
<u>United States v. Alexander,</u> 48 F.3d 1477 (9th Cir. 1995)	4, 7, 10
<u>United States v. Bensimon,</u> 172 F.3d 1121 (9th Cir. 1999)	4
<u>United States v. Brackeen,</u> 969 F.2d 827 (9th Cir. 1992) (en banc) (per curiam)	3
<u>United States v. Cordoba,</u> 104 F.3d 225 (9th Cir. 1997)	7
<u>United States v. Flaharty,</u> 295 F.3d 182 (2d Cir. 2002)	12
<u>United States v. Gay,</u> 967 F.2d 322 (9th Cir. 1992)	11
<u>United States v. Geston,</u> 299 F.3d 1130 (9th Cir. 2002)	11
<u>United States v. Glenn,</u> 667 F.2d 1269 (9th Cir. 1982)	3, 5, 8, 9
<u>United States v. Haskell,</u> 468 F.3d 1064 (8th Cir. 2006)	13
<u>United States v. Hursh,</u> 217 F.3d 761 (9th Cir. 2000)	4
<u>United States v. Larson,</u> 495 F.3d 1094 (9th Cir. 2007)	2
<u>United States v. Leonardi,</u> 623 F.2d 746 (2d Cir. 1980)	12
<u>United States v. Pena,</u> 978 F. Supp. 2d 254 (S.D.N.Y. 2013)	13
<u>United States v. Price,</u> 566 F.3d 900 (9th Cir. 2009)	12

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
<u>United States v. Singh,</u> 995 F.3d 1069 (9th Cir. 2021)	2
<u>United States v. Williams,</u> 464 F.3d 443 (3d Cir. 2006)	12-13
<u>United States v. Young,</u> 567 F.2d 799 (8th Cir. 1977)	13
Federal Rules of Evidence	
Fed. R. Evid. 403	3, 7, 8, 9, 10, 12, 14
Fed. R. Evid. 608	11, 12
Fed. R. Evid. 609	3, 4, 5, 7, 8, 9, 10, 11
Fed. R. Evid. 611	12, 14

1 **II. REQUESTS TO LIMIT IMPEACHMENT BY PRIOR CONVICTIONS**

2 Defendant may impeach the government's witnesses by offering
 3 evidence of their prior felony convictions and convictions for crimes
 4 of dishonesty that occurred within the last ten years. He may also
 5 offer evidence of their conduct in this case, pleas of guilty in this
 6 case, and motives for cooperating with the government. He may not,
 7 however, impeach or cross-examine these witnesses with evidence of
 8 any other criminal convictions. Allowing otherwise is counter to the
 9 law and will result in confusion of the issues, undue delays, and
 10 unnecessary harassment of the witnesses.

11 The Confrontation Clause of the Sixth Amendment secures the
 12 right of a criminal defendant to be confronted with the witnesses
 13 against him. Delaware v. Van Arsdall, 475 U.S. 673, 678 (1986);
 14 United States v. Singh, 995 F.3d 1069, 1080 (9th Cir. 2021).
 15 Although this guarantees "the right of effective cross-examination,"
 16 United States v. Larson, 495 F.3d 1094, 1101 (9th Cir. 2007), that
 17 right "is subject to very well-established limitations that permeate
 18 the Federal Rules of Evidence." Singh, 995 F.3d at 1080. Indeed,
 19 the Supreme Court and Ninth Circuit have made clear that the
 20 Confrontation Clause does not deprive the trial judge of discretion
 21 in setting limits on cross-examination during trial:

22 On the contrary, trial judges retain wide latitude insofar
 23 as the Confrontation Clause is concerned to impose
 24 reasonable limits on such cross-examination based on
 25 concerns about, among other things, harassment, prejudice,
 26 confusion of the issues, the witness' safety, or
 27 interrogation that is repetitive or only marginally
 28 relevant.

26 Van Arsdall, 475 U.S. at 679; see also Larson, 495 F.3d at 1101
 27 (same); Singh, 995 F.3d at 1080 (same).

1 In keeping with these Constitutional principles, the Federal
2 Rules of Evidence instruct trial judges regarding the proper scope
3 and subject matters of impeachment and cross-examination. Relevant
4 here, Federal Rule of Evidence 609 restricts impeachment and cross-
5 examination of witnesses with certain criminal convictions --
6 generally to felonies or crimes with an element of dishonesty. If
7 the conviction, or the witness's release from confinement for the
8 conviction, occurred within ten years of the testimony, Rule
9 609(a)(1) provides that evidence that a witness other than the
10 defendant has been convicted of a crime must be admitted, "subject to
11 Rule 403," if the conviction "was punishable by death or by
12 imprisonment for more than one year." If the crime required "a
13 dishonest act or false statement," it must be admitted,
14 notwithstanding Rule 403. Fed. R. Evid. 609(a)(2). Generally,
15 crimes of violence and theft crimes do not fall into the latter
16 category of automatic admissibility. United States v. Glenn, 667
17 F.2d 1269, 1273 (9th Cir. 1982); see also United States v. Brackeen,
18 969 F.2d 827, 830 (9th Cir. 1992) (en banc) (per curiam) (reaffirming
19 that "the legislative history of Rule 609 makes clear that Congress
20 used the term 'dishonesty' in a narrow sense, to mean only those
21 crimes which involve deceit") (cleaned up).

22 Where "more than 10 years have passed since the witness's
23 conviction or release from confinement for it," evidence of the
24 conviction is admissible "only if: (1) its probative value, supported
25 by specific facts and circumstances, substantially outweighs its
26 prejudicial effect; and (2) the proponent gives an adverse party
27 reasonable written notice of the intent to use it so that the party
28 has a fair opportunity to contest its use." Fed. R. Evid. 609(b);

1 United States v. Bensimon, 172 F.3d 1121, 1125-26 (9th Cir. 1999)
2 (applying Rule 609(b) balancing to a "seventeen-year-old mail fraud
3 conviction"). Impeachment by juvenile adjudications is further
4 limited to situations where allowing the impeachment is "necessary to
5 fairly determine guilt or innocence." Fed. R. Evid. 609(d).

6 The Ninth Circuit has outlined five factors that should be
7 considered in balancing the probative value of a prior conviction
8 against its prejudicial impact for purposes of both Rule 609(a)(1)
9 and Rule 609(b). United States v. Alexander, 48 F.3d 1477, 1488 (9th
10 Cir. 1995). Those five factors are: (1) the impeachment value of the
11 prior crime; (2) the point in time of conviction and the witness's
12 subsequent history; (3) the similarity between the past crime and the
13 charged crime; (4) the importance of the witness's testimony; and
14 (5) the centrality of the witness's credibility. United States v.
15 Hursh, 217 F.3d 761, 768 (9th Cir. 2000).

16 In light of the foregoing, the government hereby moves to
17 preclude impeachment and cross-examination using certain criminal
18 convictions of its cooperating witnesses as discussed further below.

19 1. Cooperating Witness-1

20 Cooperating Witness-1 has previously been convicted of the
21 following crimes:

- 22 • A 1997 misdemeanor conviction for willful cruelty to a child for
23 which he was sentenced to four years' probation and 35 days'
24 jail;
- 25 • A 1997 misdemeanor conviction for carrying a firearm in a
26 vehicle for which he was sentenced to three years' probation and
27 120 days' jail;

- 1 • A 1998 felony conviction for theft of personal property for
- 2 which he was sentenced to 78 months' imprisonment; and
- 3 • A 2006 conviction for robbery for which he was sentenced to
- 4 seven years' imprisonment.

5 Cooperating Witness-1's 1997 misdemeanor convictions for willful
6 cruelty to a child and carrying a loaded firearm were not punishable
7 by more than one year and did not involve dishonesty. They are also
8 nearly 25 years old. They are not admissible under Rule 609.

9 Cooperating Witness-1's 1998 theft and 2006 robbery convictions
10 were all punishable by imprisonment for more than one year. But
11 there is nothing to suggest the conduct underlying the convictions
12 involved dishonesty. See Glenn, 667 F.2d at 1273 ("Generally, crimes
13 of violence [and] theft crimes . . . do not involve 'dishonesty or
14 false statement' within the meaning of rule 609(a)"). The
15 convictions and corresponding releases from custody are more than ten
16 years old. There are no specific facts or circumstances suggesting
17 their probative value substantially outweighs their prejudicial
18 effect. See Fed. R. Evid. 609(b). And defendant has not provided
19 reasonable written notice of his intent to use the convictions. Id.
20 Therefore, the convictions are not admissible under Rule 609.

21 Accordingly, the government moves to preclude impeachment or
22 cross-examination of Cooperating Witness-1 with any of the above-
23 listed convictions.

24 2. Cooperating Witness-2

25 Cooperating Witness-2 has previously been convicted of the
26 following crimes:

- 27 • A 1997 misdemeanor conviction for vandalism for which he was
- 28 sentenced to three years' probation;

- 1 • A 1997 misdemeanor conviction for possession of a hypodermic
2 needle for which he was sentenced to three years' probation;
- 3 • A 1997 felony conviction for accessory for which he was
4 sentenced to two years' prison;
- 5 • Two 1998 juvenile adjudications (within the same case) for first
6 degree murder and kidnapping;
- 7 • A 2000 felony conviction for assault with a deadly weapon with a
8 firearm on a police officer for which he was sentenced to nine
9 years' imprisonment;
- 10 • A 2007 felony conviction for felon in possession of a firearm
11 for which he was sentenced to 32 months' imprisonment;
- 12 • A 2013 felony conviction for possession of a controlled
13 substance and a misdemeanor conviction for resisting a peace
14 officer (within the same case) for which he was sentenced to 44
15 months' imprisonment and one year of jail;
- 16 • A 2016 misdemeanor conviction for driving on a suspended license
17 for which he was sentenced to 120 days' jail;
- 18 • Two 2016 misdemeanor convictions for possession of a controlled
19 substance and possession of burglary tools (within the same
20 case) for which he was sentenced to 120 days' jail on each;
- 21 • A 2016 felony conviction for felon in possession of ammunition
22 for which he was sentenced to three years' probation and 26
23 days' jail; and
- 24 • A 2017 felony conviction for possession for sale of a controlled
25 substance for which he was sentenced to four years'
26 imprisonment.

27 Cooperating Witness-2's 2013 conviction for possession of a
28 controlled substance, 2016 conviction for felon in possession of

1 ammunition, and 2017 conviction for possession of a controlled
2 substance for sale are admissible under Rule 609, subject to Rule
3 403. His six misdemeanor convictions -- which were not punishable by
4 more than one year, did not involve dishonesty, and, for two,
5 occurred well more than ten years ago -- are not.¹ Nor are his 1998
6 juvenile adjudications for murder and kidnapping, which are not
7 "necessary to fairly determine guilt or innocence." Fed. R. Evid.
8 609(d).

9 Cooperating Witness-2's remaining felony convictions, namely,
10 his 1997 accessory conviction, 2000 assault with a deadly weapon
11 conviction, and 2007 felon in possession conviction, are also not
12 admissible under Rule 609. They are more than ten years old.
13 Defendant has not provided reasonable written notice of his intent to
14 use the convictions. And their probative value, if any, is minimal,
15 as defendant may impeach and cross-examine Cooperating Witness-2 for
16 the three felony convictions listed above, his conduct in the instant
17 case, his pleas of guilty in the instant case, and his motives for
18 cooperating with the government. Given as much, any probative value
19 is insufficient to outweigh the prejudicial effect of the
20 convictions, namely, the undo harassment and waste of time that would
21 result from their introduction.

22 Accordingly, with the exception of his 2013, 2016, and 2017
23 felony convictions, the government moves to preclude impeachment or
24

25
26 ¹ Felony drug distribution crimes may be probative of veracity,
27 see United States v. Alexander, 48 F.3d 1477, 1488 (9th Cir.
28 1995), as amended on denial of reh'g (Apr. 11, 1995) (conviction for
possession of rock cocaine for sale); see also United States v.
Cordoba, 104 F.3d 225, 229 (9th Cir. 1997), as amended (Feb. 11,
1997) (possession with intent to distribute cocaine), but misdemeanor
simple possession is not.

1 cross-examination of Cooperating Witness-2 with any of the other
2 above-listed convictions.

3 3. Cooperating Witness-4²

4 Cooperating Witness-4 has previously been convicted of the
5 following crimes:

- 6 • A 1989 felony conviction for robbery for which he was sentenced
7 to two years' prison;
- 8 • A 1990 misdemeanor conviction for vandalism for which he was
9 sentenced to 18 months' probation and 23 days' jail;
- 10 • A 1991 felony conviction for attempted first degree burglary for
11 which he was sentence to six years' imprisonment;
- 12 • A 1994 misdemeanor conviction for use of a controlled substance
13 for which he was sentenced to 180 days' jail; and
- 14 • Two 1995 felony convictions for petty theft with a prior and
15 second degree burglary with a prior (within the same case) for
16 which he was sentenced to 25 years to life (later reduced
17 unrelated to his cooperation in this case).

18 Cooperating Witness-4 was released from custody on his 1995
19 felony convictions within the last ten years. Thus, those
20 convictions may be admissible under Rule 609, subject to Rule 403.
21 His other misdemeanor and felony convictions are not. There is
22 nothing to suggest the conduct underlying any of the other
23 convictions involved dishonesty. See Glenn, 667 F.2d at 1273. The
24 convictions and corresponding releases from custody are more than ten
25 years old. There are no specific facts or circumstances suggesting
26 their probative value substantially outweighs their prejudicial

27
28 ² Cooperating Witness-3 does not have any known criminal
convictions.

1 effect. See Fed. R. Evid. 609(b). And defendant has not provided
2 reasonable written notice of his intent to use the convictions. Id.
3 Therefore, the convictions are not admissible under Rule 609.

4 Accordingly, with the exception of his two 1995 felony
5 convictions, the government moves to preclude impeachment or cross-
6 examination of Cooperating Witness-4 with any of the other above-
7 listed convictions.

8 4. Cooperating Witness-5

9 Cooperating Witness-5 has previously been convicted of the
10 following crimes:

- 11 • Two 2007 felony convictions (within the same case) for robbery
12 for which he was sentenced to two and six years' imprisonment,
13 respectively;
- 14 • A 2014 felony conviction for taking a vehicle without the
15 owner's consent for which he was sentenced to five years'
16 probation and five days' jail; and
- 17 • A 2014 felony conviction for conspiracy to distribute controlled
18 substances for which he was sentenced to thirteen years'
19 imprisonment.

20 Most of Cooperating Witness-5's convictions were punishable by
21 more than one year and the convictions, or the corresponding release
22 from custody, occurred within the last ten years. Thus, most of the
23 convictions are admissible under Rule 609, subject to Rule 403.

24 Cooperating Witness-5 was not released from the 2007 felony
25 conviction for robbery within the last ten years, however, and that
26 conviction should not be admitted. There is nothing to suggest the
27 conduct underlying that conviction involved dishonesty. See Glenn,
28 667 F.2d at 1273. There are no specific facts or circumstances

1 suggesting the probative value of the conviction substantially
2 outweighs its prejudicial effect. See Fed. R. Evid. 609(b). And
3 defendant has not provided reasonable written notice of his intent to
4 use the conviction. Id.

5 Accordingly, the government moves to preclude impeachment or
6 cross-examination of Cooperating Witness-5 with his 2007 felony
7 conviction for robbery.

8 5. Cooperating Witness-6

9 Cooperating Witness-6 has previously been convicted of the
10 following crimes:

- 11 • A 2001 felony conviction for manufacturing a controlled
12 substance for which he was sentenced to three years' probation
13 and one year of jail;
- 14 • A 2004 felony conviction for transporting a controlled substance
15 for which he was sentenced to seven years' imprisonment; and
- 16 • Two 2017 felony convictions (within the same case) for
17 possession for sale of a controlled substance for which he was
18 sentenced to twelve and three years' imprisonment respectively.

19 Cooperating Witness-6's 2017 felony convictions are admissible
20 under Rule 609, subject to Rule 403. His two other felony
21 convictions are not. While felony drug distribution crimes may be
22 probative of veracity, see Alexander, 48 F.3d at 1488, the
23 convictions and corresponding releases from custody are more than ten
24 years old and there are no specific facts or circumstances suggesting
25 their probative value substantially outweighs their prejudicial
26 effect. See Fed. R. Evid. 609(b). As with Cooperating Witness-2,
27 the probative value of the convictions, if any, is minimal, as
28 defendant may impeach and cross-examine Cooperating Witness-6 for the

1 two 2017 felony convictions, his conduct in the instant case, his
2 pleas of guilty in the instant case, and his motives for cooperating
3 with the government. Moreover, defendant has not provided reasonable
4 written notice of his intent to use the convictions. Id.
5 Accordingly, the government moves to preclude impeachment or cross-
6 examination of Cooperating Witness-6 with his 2001 and 2004 felony
7 conviction for drug distribution crimes.

8 **III. REQUEST FOR PRIOR APPROVAL FOR CROSS-EXAMINATION WITH PRIOR ACTS**
9 **NOT RESULTING IN CONVICTION**

10 In tandem with Rule 609's limits on impeachment with prior
11 criminal convictions, Rule 608 governs cross-examination with prior
12 acts by a witness that did not result in a conviction. Rule 608(b)
13 provides, "[e]xcept for a criminal conviction under Rule 609,
14 extrinsic evidence is not admissible to prove specific instances of a
15 witness's conduct in order to attack or support the witness's
16 character for truthfulness. But the court may, on cross-examination,
17 allow them to be inquired into if they are probative of the character
18 for truthfulness or untruthfulness of [] the witness." Rule 608 thus
19 "allows a witness to be cross-examined, in the discretion of the
20 court, regarding specific instances of misconduct which do not lead
21 to conviction, if the misconduct is probative of the witness'
22 character for truthfulness or untruthfulness." United States v.
23 Geston, 299 F.3d 1130, 1137 (9th Cir. 2002) (footnote omitted); see
24 also United States v. Gay, 967 F.2d 322, 327-28 (9th Cir. 1992)
25 (similar). Importantly, before engaging in a Rule 608 inquiry, the
26 cross-examiner must "have reason to believe the witness actually
27 engaged in conduct that is relevant to her character for
28 truthfulness." United States v. Abair, 746 F.3d 260 (7th Cir. 2014).

1 Rule 608's "probative" requirement triggers a Rule 403 inquiry
2 as to whether the evidence's probative value is outweighed by
3 concerns of confusion and unfair prejudice. United States v. Price,
4 566 F.3d 900, 912 n.13 (9th Cir. 2009). Rule 403 thus serves as a
5 backstop to the admission of evidence that, even if otherwise
6 admissible, would lead to unfair prejudice, confusing the issues, and
7 wasting the Court's and jury's time. The trial court has a "specific
8 duty to prevent counsel from confusing the jury with a proliferation
9 of details on collateral matters." Id. at 766. The protections of
10 Rule 403 are also buttressed by Rule 611, which makes clear that the
11 trial court should preclude cross-examination into areas "beyond the
12 subject matter of the direct examination and matters affecting the
13 witness's credibility" and "protect witnesses from harassment or
14 undue embarrassment." Fed. R. Evid. 611.

15 When evaluating whether certain misconduct is probative of the
16 witness' character for truthfulness, courts distinguish acts of
17 violence -- such as murder, assaults, or domestic violence (which do
18 not relate to truthfulness and are therefore inadmissible) -- from
19 acts of dishonesty -- such as false statements and fraud (which
20 relate to truthfulness and are therefore admissible). See United
21 States v. Flaharty, 295 F.3d 182, 191 (2d Cir. 2002) ("Murder
22 generally is not a crime of dishonesty, and nothing about the []
23 murder suggested that it would in any way reflect on [the witness's]
24 truthfulness."); United States v. Leonardi, 623 F.2d 746, 757 (2d
25 Cir. 1980) (district court properly barred evidence of witness's
26 "prior criminal acts not resulting in conviction and which did not,
27 by their nature, tend to impugn the witness's credibility"); United
28 States v. Williams, 464 F.3d 443, 448 (3d Cir. 2006) (no abuse of

1 discretion where district court declined to allow cross examination
2 of an alleged murder because, "[e]ven if the evidence that [the
3 witness] committed murder had been strong, it was not clearly
4 relevant to [his] truthfulness as a witness and had a strong
5 potential to prejudice the jury. In fact, the evidence was
6 exceedingly weak [because] it was based on several levels of
7 hearsay"); United States v. Haskell, 468 F.3d 1064, 1073 (8th Cir.
8 2006) (district court properly concluded that government witness's
9 previous murder charge, as a reflection of his credibility, "was not
10 relevant to prove truthfulness and was an improper subject for
11 impeachment"); United States v. Young, 567 F.2d 799, 803 (8th Cir.
12 1977) (no abuse of discretion where district court shut down cross-
13 examination of a witness regarding her attempt to have her ex-husband
14 killed; attempted murder was "not relevant to veracity or honesty and
15 would have been highly prejudicial").³

16 Here, in addition to the criminal convictions described above,
17 each of the government's cooperating witnesses have been arrested for
18 conduct that did not lead to criminal convictions. And based on
19 defendant's recent discovery requests, the government anticipates
20 that the defense will attempt to cross-examine the government's
21 cooperating witnesses at length about their criminal pasts, whether
22 the conduct is reflected in the witnesses' criminal histories or not.
23 But any such cross-examination must be limited to acts bearing on the
24

25 ³ See also United States v. Pena, 978 F. Supp. 2d 254 (S.D.N.Y.
26 2013) (cooperating witnesses' prior violent acts toward women, which,
27 in one instance, resulted in a criminal misdemeanor conviction, were
28 properly excluded from the scope of cross-examination, since the acts
"do not speak to the reliability or credibility of the witnesses";
district court saw "no reason to depart from the general rule that
evidence of past crimes relating to sex and violence are properly
excluded as having insufficient bearing on a witness' credibility").

1 witnesses' characters for truthfulness, subject to the limitations of
2 Rules 403 and 611. Prior acts of violence that fall outside of the
3 charged conspiracy, even murders, do not qualify.

4 Therefore, given the limited probative value of any such conduct
5 in light of defendant's ability to impeach and cross-examine the
6 government's cooperating witnesses with the prior criminal
7 convictions discussed above, the witnesses' conduct and pleas of
8 guilty in this case, and the witnesses' motivations for cooperating
9 with the government, the government hereby moves to preclude cross-
10 examination by uncharged acts falling outside of the scope of the
11 charged conspiracies without prior approval by the Court, outside of
12 the presence of the jury. Such approval is necessary to avoid unfair
13 prejudice, confusion of the issues, and the creation of mini-trials
14 on extrinsic incidents, as well as to protect testifying witnesses
15 from any improper attempts by the defense to run afoul of the Federal
16 Rules of Evidence.

17 **IV. CONCLUSION**

18 For the foregoing reasons, the government respectfully requests
19 that this Court preclude impeachment of the government's witnesses
20 with the relevant convictions discussed above, and require prior
21 approval before the defense may cross-examine the government's
22 witnesses with uncharged criminal conduct that did not result in a
23 conviction.